

### REMARKS

Favorable reconsideration of this application is requested in view of the above amendments and the following remarks. Claims 2, 4, 5, 7, 9-12, 14, 16-30, 32, and 35-52 are pending. Claims 1, 3, 6, 8, 13, 15, 31, 33, 34, 40, and 43 have been canceled without prejudice or disclaimer.

The revision to claims 2, 7, 14, 32 and 35 is supported, for example, at pages 52-53. Editorial revisions have been made as well.

Claims 2, 4, 5, 7, 9-12, 14, 16-26, 28-30, 32, 35, 36, 40-43 and 47-52 have been rejected for obviousness-type double patenting. The issue is rendered moot by the Terminal Disclaimer filed herewith. Applicants are not conceding the correctness of the rejection.

Figs 58A-64 have been labeled as prior art in the replacement sheets filed herewith. Therefore the objection to the drawings should be withdrawn.

Claims 19 and 36 have been amended editorially in response to the issues noted in the objection to these claims. Therefore, the rejection should be withdrawn.

Claims 40, 41, 43, and 47 have been rejected as anticipated by the Admitted Prior Art. The rejection is moot for canceled claims 40 and 43; Applicants are not conceding the correctness of the rejection to those claims. Claim 41 includes a feature that the position of the second light source is set further from the focusing means than a position that is substantially midway between the position of that light source at which the aberration at the information recording surface of the second information recording medium when the optical element is not present is at a minimum, and the position of that light source at which light of the second wavelength that is incident on the focusing means is collimated light. None of Fig. 58A, Fig. 61 or the accompanying portions of the specification describe or even suggest such positioning for the second light source. Therefore the rejection should be withdrawn.

Claims 2, 4, 5, 7, 9-12, 14, 16-19, 26-30, 32 and 35 have been rejected as obvious over the Admitted Prior Art in view of JP 2002-62415. Favorable reconsideration of this rejection is requested.

Independent claims 2, 7, 14, 32 and 35 require the presence of grooves with differing depths, with the grooves being arranged in the order depth 2d, depth 4d, depth d, depth 3d, or in the order depth 3d, depth d, depth 4d, depth 2d. The claims further require that when light of a wavelength  $\lambda_2$  in a range of 630 nm to 680 nm passes through the grooves, with respect to each

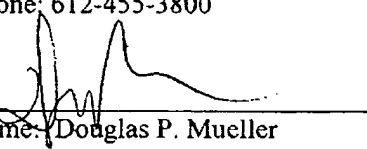
of the grooves, a fractional value smaller than a decimal point of a value obtained by dividing a light path difference attributable to the grooves by the wavelength  $\lambda_2$  is calculated, and when the calculated fractional values corresponding respectively to the grooves are arranged in an order in which the grooves are lined up, the fractional values are in an order ascending or descending in a stepwise manner. Because  $(n-1) \times d$  is required to be between 380 and 420 nm, it can be seen that the depth  $d$  corresponds to the groove depth of about  $0.6 \lambda_2$ . See page 53, lines 2-4 of the present specification. As further discussed on page 53 of the specification,  $2d$  is  $1.2\lambda_2$ ,  $3d$  is  $1.8\lambda_2$  and  $4d$  is  $2.4\lambda_2$ . Since the integral multiples of  $\lambda_2$  can be ignored with respect to phase shift, the fractional portions of these is taken into account, and the invention of claims 2, 7, 14, 32 and 35 arranges the grooves in an order in which phase shift increases or decreases stepwise, which has been found to provide improved diffraction efficiency. Neither the admitted prior art nor JP 2002-62415 suggests the order of the grooves as required in claims 2, 7, 14, 32 and 35, nor does either reference concern itself with the advantageous results that are obtained. Therefore, this rejection should be withdrawn.

In view of the above, Applicants request reconsideration of the application in the form of a Notice of Allowance.

Respectfully submitted,

HAMRE, SCHUMANN,  
MUELLER & LARSON, P.C.  
P.O. Box 2902  
Minneapolis, MN 55402-0902  
Phone: 612-455-3800

Date: June 30, 2008

By   
Name: Douglas P. Mueller  
Reg. No. 30,300  
Customer No. 53148